

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) CC Docket 96-45
Federal-State Board on)
Universal Service)

RESPONSE OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES
TO REQUEST FOR ADDITIONAL COMMENT

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SUMMARY

The Association for Local Telecommunications Services (ALTS) limits its response to the Request for Further Comment on Specific Questions in the Universal Service Proceeding to six questions. With respect to discounts for school, libraries and health care providers, ALTS demonstrates that Congress did not intend that an unlimited number of services be discounted. Instead, if the Commission seeks to include services in addition to the core services it must make a reasoned decision based upon the record that a discount for the particular service would serve an identifiable public interest goal. In addition, Section 254(h) does not contemplate that inside wiring be eligible for universal service support as it is not a "telecommunications service" as defined in the 1996 Act.

Price cap companies should not receive universal service subsidies for high-cost areas unless and until they can demonstrate that without an explicit universal service subsidy the company as a whole will be unable to earn a fair return. A price cap company should be required to demonstrate why internal subsidies are no longer available or sufficient to enable the provision of service in high-cost areas if it is to receive universal service support.

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Pursuant to the Public Notice released July 3, 1996, DA 96-1078, the Association for Local Telecommunications Services hereby submits its answers to questions that were raised therein. Pursuant to the instructions in the Notice, the questions are restated above their responses.

QUESTION 4:

What are the effects on competition if a carrier is denied universal service support because it is technically infeasible for that carrier to provide one or more of the core services?

The services that the Commission proposed to treat as "core" services are 1) voice grade access to the public switched network with the ability to place and receive calls, 2) touch-tone, 3) single party service, 4) access to emergency services (911), and 5) access to operator services.

None of the services proposed by the Commission or suggested as additions to the Commission proposal are technically difficult to provide if Sections 251 and 252 of the 1996 Act are implemented consistent with congressional intent and in a timely fashion.

However, if Sections 251 and 252 are not implemented in a manner that enables and encourages competitive providers to obtain interconnection and network elements in a timely and economically feasible manner, competitive carriers could have an insurmountable problem in attempting to provide any of the core services. An obvious example would be if the cost of access to the databases necessary for the provision of emergency services were set at a rate that made it economically infeasible for competitive carriers to use the ILEC's data bases, competitive carriers would be unable to provide such services. If the interconnection and access to unbundled elements requirements of Section 251 and 252 are not implemented properly, the competitive carriers will remain what they are today - entities providing primarily interexchange access in niche markets. At that point, quite frankly, it wouldn't really matter whether competitive carriers are eligible for universal service support.

The members of ALTS are confident that they will be able to provide all the core services necessary to be eligible for universal service support as long as they can obtain the network elements and interconnection required by the 1996 Act in a timely and economically efficient manner.

QUESTION 6:

Should the services or functionalities eligible for discounts [for schools, libraries and health care providers] be specifically limited and identified, or should the discount apply to all available services?

Section 254 does not envision a discount on all services

provided to educational institutions, libraries and health care providers. Section 254 is, in fact, rather modest in its scope with respect to such institutions.

The question raised in the public notice is presumably based upon subsection (c)(3) which states that "in addition to the services included in the definition of universal service . . . the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers." The very existence of this section indicates that Congress did not intend that all services be eligible for discounts. If Congress had so intended, subsection (c)(3) would be superfluous. Thus, although Congress opened the door for the Commission to add services to those basic ones included in the definition of universal service, it is clear that Congress did not intend that the services for which discounts should be available should be unlimited.¹

¹ Other subsections of section 254 support this conclusion. For example, Congress stated that "universal service is an evolving level of telecommunications services that the Commission shall establish periodically." (Section 254(c)(1)).

In addition, with respect to "advanced services", the Commission is instructed to establish competitively neutral rules to "enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all . . . elementary and secondary school classrooms, health care providers, and libraries. Had Congress intended that all advanced telecommunications and information services be eligible for discounts, again, it could have easily so provided. Instead, it only provided that the Commission should "enhance" access to advanced telecommunications services. The members of ALTS take no position on whether the Commission has the ability to require discounts for some advanced telecommunications services other than to note that Congress clearly did not intend that all such services be eligible for discount. At the very least there would have to be a strong

In order for the Joint Board and the Commission to make a determination that any service (in addition to those identified under 254(c)(1)) should be eligible for discount under subsection (c)(3), the Joint Board and the Commission must make a reasoned decision based upon the record that discounts for individual services would serve the public interest. Based upon the guidelines contained in (c)(1) additional services must be found, at a minimum, to be specifically related to educational or public health or safety goals and any additional services must be limited to those necessary to promote an identified goal.

The members of ALTS support attempts to ensure that communications services to educational institutions be provided in an efficient and economically feasible manner and stand ready to support that effort to the extent that they can if such efforts are accomplished in a competitively neutral manner and within the framework of the 1996 Act.

showing that the discount for a particular service, enhanced the public interest and was directly linked to a valid educational goal.

Finally, with respect to health care providers, subsection (h)(1) provides only that services "necessary for the provision of health care" in rural areas must be provided at rates that are "reasonably comparable to rates charged for similar services in rural areas in that state." Thus, this subsection contemplates a discount for rural health care providers only when there is a significant difference between the price in the rural and urban areas of the state and only for those services necessary for the provision of health care.

QUESTION 7:

Does Section 254(h) contemplate that inside wiring or other internal connections to classrooms may be eligible for universal service support of telecommunications services provided to schools and libraries? If so, what is the estimated cost of the inside wiring and other internal connections?

Section 254(h) does not contemplate that inside wiring or other internal connections to classrooms be eligible for universal service support of telecommunications services provided to schools and libraries. As indicated in our answer to question 6, the services for which support should be available is limited. In any event, support is clearly limited to "telecommunications services" which is defined as meaning the "offering of telecommunications for a fee directly to the public." "Telecommunications" means the transmission between or among the points specified by the user, of information of the users choosing" The provision of inside wiring is a detariffed, competitive offering involving facilities and equipment necessary for the provision of telecommunications service, but is not itself a telecommunications service under the 1996 Act. Therefore, it is not eligible for universal service support.²

ALTS has no independent information on the estimated cost of

² Cf. P. Pitsch and A. Bresnahan, Common Carrier Regulation of Telecommunications Contracts and the Private Carrier Alternative, 48 Fed. Comm. L.J. 447, 451-52 ("[I]t appears from the definitions of 'telecommunications service' and 'telecommunications carrier' in the Telecommunications Act of 1996 that Congress has extended the common carrier classification . . . to assist in the identification of entities and services to be subject to the requirements of the new law.")

the inside wiring and other internal connections.

QUESTION 9:

How can universal service support for schools, libraries and health care providers be structured to promote competition.

The way to promote competition is to ensure that the Act is implemented in the way that Congress intended. The Joint Board must ensure that any policies it adopts is competitively neutral. In its initial comments ALTS did not address support for schools, libraries and health care providers specifically, but advocated a number of principles that should govern universal service support to high cost and rural areas. Very similar principles should be applied in the area of support for schools, libraries and health care providers. Any regulations or principles adopted must:

- result in support that can be carefully quantified, controlled, targeted, and explicitly linked to the provision of service to schools, libraries and health care providers
- ensure that whatever means of distribution (e.g. to carrier or to particular institution) be competitively neutral. If an institution were to receive support directly, it must be able to apply that support to eligible services from the carrier of its choosing.
- require that funds be collected and disbursed in a competitively neutral, equitable and non-discriminatory manner
- ensure that the calculation of any subsidy be delinked from ILEC costs or any "revenue requirement."
- be technology neutral

QUESTION 29

Should price cap companies be eligible for high-cost support, and if not, how would the exclusion of price cap carriers be consistent with the provisions of section 214(e) of the Communications Act? In the alternative, should high-cost support be structured differently for price cap carriers than for other carriers?

A primary goal of the Congress in enacting new section 254 was to ensure that all subsidies be carefully quantified, controlled, targeted, and explicitly linked to the provision of affordable service to consumers who otherwise might not have access to telecommunications services at rates that are "affordable".

Price cap companies are in a different position than most incumbent local exchange companies in high cost areas for which universal service support should be targeted. Price cap companies, by previously consenting to provide service pursuant to a cap, have admitted that provision of service in a particular area, whether high cost or not, is reasonable for that company. As a practical matter, these companies have agreed to price caps because, within the company, even if there are areas for which service cannot be provided at an affordable rate, costs in total are manageable and the companies have concluded that on the whole it can make a reasonable profit. Thus, if there are areas where the company is not recovering its costs, there must be areas in which the company is making supra competitive profits. Price cap companies thus accept that they have been able to serve high cost areas because of internal subsidy flows. In effect, these

companies have already agreed to "average" their rates between high cost and lower cost areas in return for the freedom of operating under the price cap regime.

Price cap companies ought not to receive universal service subsidies for high-cost areas unless and until they can demonstrate that without an explicit universal service subsidy the company as a whole will be unable to earn a fair return. In order to do that a price cap company would be required to specifically identify all internal subsidies that have enabled them to provide service below cost under the price cap plan. In addition, the company would need to demonstrate why those internal subsidies are no longer available to ensure affordable rates in their "high cost" areas. Without identifying such internal subsidies and the fact that they are no longer available or are insufficient to enable the provision of below cost service, it will be impossible for the administrator of any universal service subsidy to determine whether the universal service subsidy is necessary to ensure that "quality services . . . be available at just, reasonable, and affordable rates."

47 U.S.C. § 254(b)(1).

Price cap companies would thus be required to make a different showing than would other companies in seeking universal service support for high cost areas. This is entirely reasonable given the increased pricing flexibility that they have won under the price cap schemes. At the same time, the above proposal provides a safety net for high cost areas should the price cap

companies be able to demonstrate the need for support.

Question 30

If price cap companies are not eligible for support or receive high-cost support on a different basis than other carriers, what should be the definition of a "price cap" company? Would companies participating in a state, but not a federal, price cap plan be deemed price cap companies? Should there be a distinction between carriers operating under price caps and carriers that have agreed, for a specific period of time, to limit increases in some or all rates as part of a "social contract" regulatory approach.?

Certainly any carrier that comes under the Commission's price cap plan ought to be required to make the showing articulated above. While ALTS is not familiar with all "price cap" plans, the burden should be on the carrier to show that any particular plan that it is under does not give the carrier sufficient pricing flexibility to warrant the increased scrutiny.

Respectfully submitted,

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August 3, 1996

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Response to Request for Additional Comment of the Association for Local Telecommunications Services was served August 2, 1996, on the following persons by First-Class Mail or by hand service, as indicated.


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